

BEFORE THE  
**RECEIVED** FEDERAL COMMUNICATIONS COMMISSION  
 WASHINGTON, D.C. 20554

JUN 26 1998

ORIGINAL

FCC MAIL ROOM

In re Amendment of Section 73.202(b)	)	
of the Commission's Rules, Table of Allotments,	)	MM Docket No. 98-63
FM Broadcast Stations	)	RM-9209
(POTTSBORO, TEXAS, ET AL.)	)	

To: The Chief, Allocations Branch, Mass Media Bureau

**COMMENTS AND COUNTERPROPOSAL**

Thomas S. Desmond, by his communications counsel, hereby files his Comments in response to the Notice of Proposed Rule Making in the instant proceeding, DA 98-860, released May 8, 1998 (the *NPRM*).

**I. BACKGROUND**

1. In response to the petition for rule making of Grayson Broadcasting Company (*GBC*), the Commission issued the *NPRM*, which proposes the allotment of Channel 273C3 to Pottsboro, Texas, as the community's first local service. To accommodate the allotment at Pottsboro, GBC seeks:

- the substitution of Channel 292A for Channel 296A at Durant, Oklahoma;
- a concomitant modification of Station KLBC's license;
- the substitution of either Channel 296A or Channel 296C3 for Channel 272A at Madill, Oklahoma; and
- the concomitant modification of Station KMAD's license.

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2. The NPRM recites that Pottsboro is an incorporated community with:
  - a 1990 U.S. Census population of 1,177 persons; and
  - various civic attributes.
3. On April 3, Mr. Desmond filed a Petition for Rule Making seeking the allotment of Channel 273A to the community of Leonard, Texas. See Attachment A. On April 22, 1998, Mr. Desmond supplemented his Petition for Rule Making. See Attachment B.

## II. ARGUMENT

4. It appears that GBC's requested allotment of Channel 273C3 to the community of Pottsboro is mutually exclusive with Mr. Desmond's requested allotment of Channel 273A to the community of Leonard. Therefore, Mr. Desmond claims Counterproposal status for his Leonard Petition in this proceeding, and, by this express reference, incorporates his prior filings into these Comments and into this proceeding.

5. Because of the conflict between the two rule-making petitions, the Commission must judge the two, as well as any other conflicting proposals that the Commission receives by the June 29 Comment deadline in this proceeding, using the body of case law that has arisen in the Commission's implementation of Section 307(b) of the Communications Act. The FCC judges the relative merits of competing allotment proposals by the following priorities:

- (1) first aural service;
- (2) second aural service;
- (3) first local service; and
- (4) other public-interest factors.

Priorities (2) and (3) have equal rank. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). Here, both Pottsboro and Madill lack a local service. Thus, both proposals have equal rank under priority three, and it appears that neither proposal enjoys a priority under Category 1 or Category 2. When faced with a conflict between proposed first local services, neither of which triggers a priority under Category 1 or Category 2, and where, as here, each community appears to enjoy a number of reception services, the Commission favors the more (or, if more than two communities are involved, the most) populous community. See, e.g., Three Oaks and Bridgeman, Michigan, 5 FCC Rcd 1004 (1990); Clarksville and Lanesville, Indiana, 4 FCC Rcd 4968 (1989).

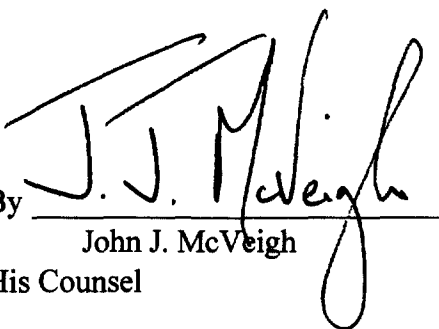
6. As Mr. Desmond's Petition has already demonstrated, Leonard has a population of 1,744, almost half again as much as Pottsboro. Because the number of people living in each respective community is the dispositive factor, and Leonard is substantially larger than Pottsville, the Commission must favor Leonard. Three Oaks et al., supra, Clarksville et al., supra. Moreover, as Mr. Desmond has also already demonstrated, Leonard has a full array of civic attributes that make it worthy of a local service.

### III. CONCLUSION

For the reasons stated above, the FCC must reject GBC's proposal, and instead grant Mr. Desmond's Petition/Counterproposal.

Respectfully submitted,

**THOMAS S. DESMOND**

By   
John J. McVeigh  
His Counsel

JOHN J. McVEIGH, ATTORNEY AT LAW  
12101 BLUE PAPER TRAIL  
COLUMBIA, MARYLAND 200036  
(202) 296-1800

Date: June 25, 1998

**ATTACHMENT A**

APR - 3 1998

FILE

**FCC MAIL ROOM**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, D.C. 20554**

In re )  
 )  
Amendment of § 73.202(b), ) MM Docket No. 98-\*\*\*  
Table of Allotments, ) RM-\*\*\*\*  
FM Broadcast Stations )  
(Leonard, Texas) )

To: The Chief, Allocations Branch,  
Mass Media Bureau

**PETITION FOR RULE MAKING**

Thomas S. Desmond, by counsel, hereby petitions the Commission to commence a rule making seeking the allotment of Channel 273A to the community of Leonard, Texas. As this Petition will show, allotting Channel 273A to Leonard comports with the Commission's mandate under § 307(b) of the Communications Act to fairly apportion radio service among the several States and communities.

1. Leonard, although incorporated, currently lacks a local service. According to the 1990 Census, Leonard has a population of 1,744. In addition to its status as an incorporated community, Leonard has a number of other demographic attributes making it worthy of local service. The Leonard City Government has a Mayor, a City Council, a police department, and ee its own Post Office and Zip Code, 75452 There are also more than 37 independent businesses within Leonard. The town is outside any Urbanized Area. See Exhibit A hereto, the Engineering Statement of Stephan M. Kramer, P.E.

2. Leonard clearly satisfies the demographic criteria for licensable communities.

Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982). Exhibit A hereto shows that the Commission may allot Channel 273A to Leonard in conformity with spacing and city-grade-service rules. Spacing constraints may require the imposition of a site restriction or of two other amendments to the FM Table to ensure transmitter sites for Channel 273A at Leonard that comport with the requirements of both §§ 73.207 and 73.315 of the Rules. Accordingly, Mr. Kramer's Engineering Statement presents two alternatives with regard to the allotment of Channel 273A to Leonard. The first alternative, Option 1, requires no other changes to the community of allotments. In this case, the reference point for Channel 273A at Leonard is 7.4 km north of the community. That still places Leonard well within the city-grade radius of a maximum-parameter Class A facility operating at the reference point. The other alternative, Option 2, requires no site restriction at all at Leonard. However, it does require frequency changes at Durant, Oklahoma (Channel 292A for Channel 296A) and at Madill, Oklahoma (Channel 296A for Channel 273A). The site restriction presented under Option 1 becomes unnecessary upon the denial of an Application for Review pending in MM Docket 95-126.

3. Mr. Desmond prefers the adoption of Option 1, but presents Option 2 should the Commission feel the need to allot the Channel without a site restriction prior to the termination of MM Docket 95-126. See, e.g., Chico, California, 6 FCC Rcd 4294 (1991). Should the Commission adopt Option 2 such that frequency changes must occur at Durant and Madill, and assuming the Commission awards the construction permit for Channel 273A at Leonard to Mr. Desmond, Mr. Desmond pledges to reimburse the affected licensees pursuant to the

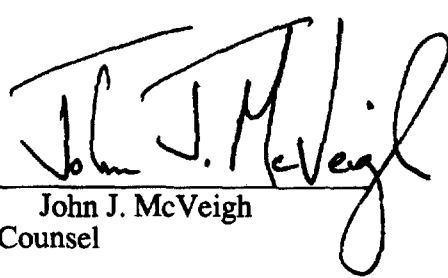
guidelines set forth in Circleville, Ohio, 8 FCC 2d 159 (1967). Furthermore, the two frequency changes (one at Durant, the other at Madill), *assuming the Commission deems them necessary*, are permitted under Columbus, Nebraska, 59 Rad. reg. (P & F) 2d 1184 (1986).

4. Mr. Desmond hereby states his intent to apply for Channel 273A to Leonard upon the Commission's allotment of the frequency to that community. Mr. Desmond further states his intent to expeditiously construct the facility his application will specify, upon grant of that application, to then begin providing local service to the community, and to seek a license to cover his authorized facility.

5. For the above reasons, Mr. Desmond requests the allotment of Channel 273A to the community of Leonard, Texas.

**THOMAS S. DESMOND**

By

  
John J. McVeigh  
His Counsel

JOHN J. McVEIGH, ATTORNEY AT LAW  
12101 Blue Paper Trail  
Columbia, Maryland 21044-2787  
(301) 596-1655

Date: April 2, 1998



**EXHIBIT A**

-1-

ENGINEERING STATEMENT

This Engineering Statement was prepared on behalf of Thomas S. Desmond in support of a new Rulemaking Petition to amend the FM Table of Allotments (Section 73.202.) Specifically, Mr. Desmond seeks to have Channel 273A assigned to the community of Leonard, Texas as follows:

<u>City, State</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
<u>OPTION 1</u>		
Leonard, TX	-	273A*
<u>OPTION 2</u>		
Durant, OK	248C2, 296A	248C2, 292A
Madill, OK	273A**	296A**
Leonard, TX	-	273A*

\* Site restriction 7.4 kilometers north required.

\*\* Station KMAD-FM at Madill, Oklahoma presently operates on Channel 272A; There exists a pending Docket MM95-126 requesting a change to Channel 273A (Petition for recon. denied 07-18-97, petition for review filed 08-18-97.) If/when the petition for review is denied, Option 2 becomes unnecessary.

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With a grant of the Petition which this statement supports, Mr. Desmond would have the Commission serve the public interest, convenience, and necessity by amending Section 73.202(b), thus providing the community of Leonard with its first local service, and will result in a more efficient use of FM spectrum.

#### I. DEMOGRAPHIC DATA

The community of Leonard, Texas is an incorporated city within Fannin County, approximately 84 kilometers northeast from Dallas. The 1990 Census lists the Leonard population at 1,744 persons, and the total Fannin County population at 24,804 persons. The city has identifiable boundaries as required in the Revision of FM Assignment Policies and Priorities, 51 R.R. 2d 807, 816 (1982).

The city of Leonard is served by a Mayor, City Council, and police department. In addition, there are over 37 independent businesses within Leonard, and the community is located outside of any urbanized area.

#### II. PETITIONER WILL APPLY FOR THE REQUESTED FACILITY

Thomas S. Desmond will file an application for Channel 273A at Leonard and promptly begin construction upon issuance of a construction permit if the instant petition is granted. See FM Channel Assignments, 53 R.R. 2d, 341, 344.

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### III. ENGINEERING DATA

The requested coordinates for the proposed Channel 273A allocation at Leonard, Texas are:

N.L. 33-26-42

W.L. 96-14-02

This location is 7.4 kilometers north from the reference coordinates for Leonard (N.L. 33-22-46, W.L. 96-14-50.) This site restriction is necessary to provide minimum required spacing toward station KBRQ (FM), Channel 273C1, Hillsboro, Texas. Table 1.0 presents the allocation study results from the above requested coordinates.

An alternate request (Option 2) is advanced herein due to a pending application for review filed 08-18-97 in MM Docket 95-126. Table 2.0 presents the alternate Channel 292A allocation study for Station KLBC (FM), Channel 296A, Durant, Oklahoma. Likewise, Table 3.0 presents the alternate Channel 296A allocation study for Station KMAD-FM, Channel 273A, Madill, Oklahoma. Thomas S. Desmond agrees to provide reimbursement expenses consistent with Commission policy for each of the above stations to change frequencies following grant and implementation of the instant petition.

Wherefore, the premises considered, it is respectfully requested the Commission institute a rulemaking proceeding to amend the FM Table of Allotments, Section 73.202(b) by the addition of Channel 273A to Leonard, Texas, and if deemed necessary, issue Show Cause Orders modifying the licenses for Stations KMAD-FM and KLBC.

STEPHAN W. BROWER, F.E.C. AND ASSOCIATES  
**BROADCAST AND FAA CONSULTING ENGINEERS**  
 10500 BIGHORN TRAIL, SUITE 100 FRISCO, TX 75035-6626 (972) 529-5123

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TABLE 1.0  
 FM ALLOCATION ANALYSIS  
 PROPOSED CHANNEL 273A ALLOTMENT

=====

THOMAS S. DESMOND  
 NEW 102.5 MHz LEONARD, TEXAS

FM Study for:	NEW TOMD	FCC Database	33-26-42
Location:	LEONARD, TX	Channel Class: A	96-14-02
Call City, State		Chan Class Freq kW Latitude Dist.	Required
Status Proponent		File Number HAAT Longitude Azm.	Clear (km)
-----			
>>>>>>> Study For Channel 273 102.5 MHz <<<<<<<<			
KMADFM MADILL, OK	273 A 102.5	34-06-24 88.9	115
ADD HUNT BROADCASTING, IN	Docket-95-126 0	96-46-30 325.8	-26.1 SHORT
Use of 73.215 for short spacing requires: 92 -3.1 SHORT			
Petition for Recon D95-126, 960614 by Carephil Communications-Petition			
Denied 970718-Application for Review 970818			
KBRQ HILLSBORO, TX	273 C1 102.5 100.	31-49-29 199.54	200
LIC SONACE WACO LICENSE S	BLH-840326AS 137	97-09-33 206.0	-0.46 CLOSE
KKYRFM TEXARKANA, TX	273 C1 102.5 100.	33-25-48 199.77	200
LIC GULFSTAR COMMUNICATIO	BLH-891218KD 140	94-05-08 89.9	-0.23 CLOSE
KMADFM MADILL, OK	272 A 102.3 3.00	34-06-24 88.9	72
LIC RADIO STATION KMAD	BLH-850523KA 71	96-46-30 325.8	+16.9 CLEAR
KMADFM MADILL, OK	272 A 102.3	34-06-24 88.9	72
DEL HUNT BROADCASTING, IN	Docket-95-126 0	96-46-30 325.8	+16.9 CLEAR
Petition for Recon D95-126, 960614 by Carephil Communications-Petition			
Denied 970718-Application for Review 970818			

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TABLE 2.0  
 FM ALLOCATION ANALYSIS (OPTION 2)  
 FOR STATION KLBC (FM), DURANT, OK  
 =====

THOMAS S. DESMOND  
 NEW 102.5 MHz LEONARD, TX

FM Study for: KLBC		FCC Database				34-00-07	
Location: DURANT, OK		Channel Class: A				96-25-19	
Call	City, State	Chan	Class	Freq	kw	Latitude	Dist.
Status	Proponent	File Number	HAAT	Longitude	Azm.	Required Clear (km)	
-----							
>>>>>> Study For Channel 292 106.3 MHz <<<<<<<							
KHKS	DENTON, TX	291 C		106.1	100.	32-35-22	164.75 165
LIC	PACIFICA & SOUTHERN C	BLH-840523DM	483	96-58-10	198.2	-0.25	CLOSE
KTLS	HOLDENVILLE, OK	293 C3		106.5	25.0	34-54-50	101.6 89 73.215
CP	TYLER BROADCASTING CO	BMPH-961220IB	100	96-31-20	354.8	+12.6	CLOSE
One-Step Application (Mod) from channel 293A							
KFXT	SULPHUR, OK	291 A		106.1		34-37-22	85.7 72
ADD	BOWIE-NOCONA BROADCAST	Docket-97-84	0	96-58-37	323.6	+13.7	CLOSE
Site Restriction 12.7km North							

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TABLE 3.0  
 FM ALLOCATION ANALYSIS (OPTION 2)  
 FOR STATION KMAD-FM, MADILL, OK

=====

THOMAS S. DESMOND  
 NEW 102.5 MHz LEONARD, TX

FM Study for:	KMADFM	FCC Database	34-06-24
Location:	MADILL, OK	Channel Class: A	96-46-30
Call City, State		Chan Class Freq kW Latitude Dist.	Required
Status Proponent		File Number HAAT Longitude Azm.	Clear (km)
-----			
>>>>>> Study For Channel 296 107.1 MHz <<<<<<<			
ALLOC DURANT, OK	296 C3 107.1	34-13-33 35.2	142
VAC	-	0 96-25-15 67.9	-106.8 SHORT
Use of 73.215 for short spacing requires: 119 -83.8 SHORT			
Effective 10-29-90 -- Reserved for KLEC per Docket 88-48 -- downgraded from			
Class C2 to C3 by grant of BMPH-940401IA on 950410 at the applicant's			
request. (BMPH-940401IA cancelled by letter 960807)			
KLBC DURANT, OK	296 A 107.1 5.1	34-00-07 34.6	115
APP DURANT BROADCASTING C	BMLH-920203KB 108	96-25-19 109.5	-80.4 SHORT
Use of 73.215 for short spacing requires: 92 -57.4 SHORT			
* To Channel 296C3 per Docket 88-48			
KLBC DURANT, OK	296 A 107.1 2.00	34-00-07 34.6	115
LIC DURANT BROADCASTING C	BLH-880819KF 108	96-25-19 109.5	-80.4 SHORT
Use of 73.215 for short spacing requires: 92 -57.4 SHORT			
* To Channel 296C3 per Docket 88-48			
KYNZ LONE GROVE, OK	294 A 106.7 5.5	34-14-09 45.8	31
LIC CHUCKIE BROADCASTING	BLH-920611KB 104	97-14-48 288.4	+14.8 CLOSE

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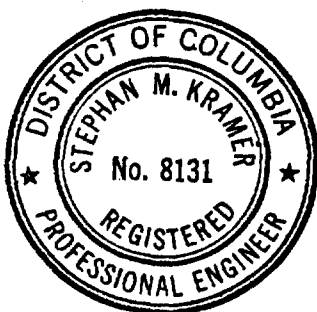
ENGINEERING AFFIDAVIT

State of Texas       )  
                              )       SS:  
County of Collin    )

Stephan M. Kramer, being duly sworn, deposes and states that he is a Registered Professional Engineer licensed in Texas and the District of Columbia, that he holds a B.S. Degree in Electrical Engineering from the University of Akron, and that he is a qualified and experienced Communications Consulting Engineer whose expert testimony and works are a matter of record with the Federal Communications Commission having received numerous application grants. He further states Mr. Thomas S. Desmond retained the firm of Stephan M. Kramer, P.E. and Associates to prepare the attached Engineering Statement.

The deponent further indicates the Statement was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

This declaration is made under penalty of perjury under the laws of the United States.



*Stephan M. Kramer, P.E.* 03-11-98

Stephan M. Kramer, P.E.  
Texas P.E. # 54370  
District of Columbia P.E. # 8131



**ATTACHMENT B**

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In re Amendment of Section 73.202(b) of        ) M.M. Docket No. 98-\*\*\*  
the Commission's Rules, Table of Allotments, ) RM-\*\*\*\*  
FM Broadcast Stations                                )  
(Leonard, Texas)

To: The Chief, Allocations Branch, Mass Media Bureau

**SUPPLEMENT TO PETITION FOR RULE MAKING**

Thomas S. Desmond, by counsel, hereby files this Supplement to his Petition for Rule Making, filed April 3, 1998, seeking the allotment of Channel 273A to the community of Leonard, Texas. Mr. Desmond's Petition presented two options for the Commission's consideration. Paragraph two of the Petition stated the options as follows:

The first alternative, Option 1, requires no other changes to the [table] of allotments. In this case, the reference point for Channel 273A at Leonard is 7.4 km north of the community. That still places Leonard well within the city-grade service radius of a maximum-parameter Class A facility operating at the reference point. The other alternative, Option 2, requires no site restriction at all at Leonard. However, it does require frequency changes at Durant, Oklahoma (Channel 292A for Channel 296A) and at Madill, Oklahoma (Channel 296A for Channel 273A). The site restriction under Option 1 becomes unnecessary upon the denial of an Application for Review pending in MM Docket 95-126.

A portion of the quote is inaccurate. As page one of the Engineering Statement accompanying Mr. Desmond's petition sets forth, both Option 1 and Option 2 require the 7.4-km site restriction a Leonard. Moreover, what becomes unnecessary upon denial of review and finality

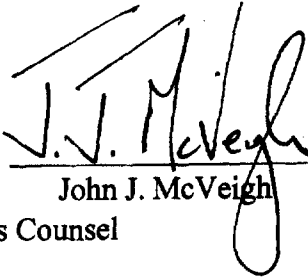
thereof in MM Docket 95-126 is Option 2 itself and any need to involve in this proceeding the Durant and Madill allotments.

Counsel regrets any confusion that the quoted language may have caused. We are also serving copies of the Petition and of this Supplement on the Madill and Durant licensees.

Respectfully submitted,

THOMAS S. DESMOND

By



John J. McVeigh  
His Counsel

JOHN J. McVEIGH, ATTORNEY AT LAW  
12101 Blue Paper Trail  
Columbia, Maryland 21044-2787  
(301) 596-16550

Date: April 22, 1998

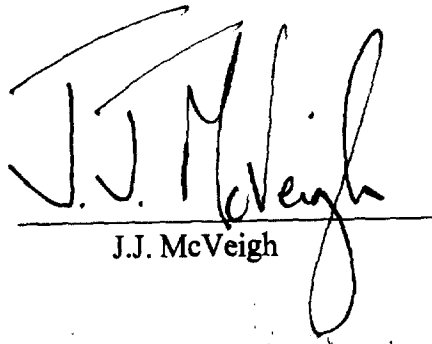
**CERTIFICATE OF SERVICE**

I hereby certify that I have this Twenty-Second day of April 1998 sent copies of the foregoing **SUPPLEMENT TO PETITION FOR RULE MAKING** and of the related **PETITION FOR RULE MAKING** by first class mail to:

**STEVE LANDTROOP, INC.**  
**1418 N. 1ST AVENUE**  
**DURANT, OKLAHOMA 74701-2812**  
Licensee, Radio Station KMAD-FM, Madill, Oklahoma

and to:

**DURANT BROADCASTING CORPORATION**  
**1418 NORTH 1ST AVENUE**  
**DURANT, OKLAHOMA 74701-2812**  
Licensee, Radio Station KLBC(FM), Durant, Oklahoma

  
J.J. McVeigh

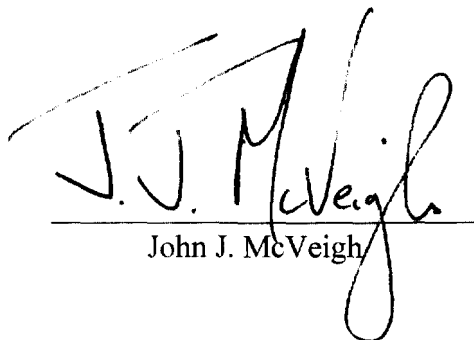
**CERTIFICATE OF SERVICE**

I hereby certify that I have, this Twenty-fifth day of June, 1998, sent copies of the foregoing **COMMENTS AND COUNTERPROPOSAL**, by first-class United States mail, postage prepaid, to:

Durant Broadcasting Corporation  
1418 North First  
Durant, Oklahoma 74701  
(Licensee of Station KLBC)

Steve Landtroop, Inc.  
1418 N. First Street  
Durant, Oklahoma 73446  
(Licensee of Station KMAD-FM)

Andrew S. Kersting, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
11th Floor, 1300 North 17th Street  
Rosslyn, Virginia 22209-3801  
(Counsel to Grayson Broadcasting Company)



John J. McVeigh